IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-864

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, PETITIONER,

versus

F. W. PITTS, ET AL.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

REASONS FOR NOT GRANTING THE WRIT OF CERTIORARI

The Writ in this case should not be granted for the reason that the question raised by the petitioner has already been decided by this Court adversely to the petitioner.

The only question raised in the petition is whether or not the Court below has acted directly contrary to this Court's decision in *Citizens to Preserve Overton Park v.*

Volpe, 401 U. S. 402, 415-421, with respect to the proper procedure for judicial review of informal Agency action.

It is true, as alleged by the petitioner, that the Court below did not refer to *Citizens to Preserve Overton Park v. Volpe, supra.* However, the principal issue before the Court below was whether the Court had any right to give judicial review in this case. That issue was fully disposed of in the case of *Data Processing Service v. Camp,* 397 U. S. 150, 156-157, and the Court below relied upon that case in holding that the judicial review provisions of the Administrative Procedure Act applied to the Comptroller of the Currency of the United States.

In the present petition the petitioner does not question the right of judicial review, but only questions the method by which the review is to be accomplished. The petitioner claims that the case should have been remanded to the Comptroller for further consideration rather than to the District Court for judicial review. The case of *Overton Park, supra,* does not support the petitioner in this contention. As a matter of fact, the dissenting opinion in the *Overton Park* case, *supra,* would have required that the whole matter be remanded back to the Secretary of Transportation, whereas the majority opinion of this Court held that the case should be remanded to the District Court for plenary review. There are three types of judicial review referred to in the *Overton Park* case, *supra.* First is the "substantial evidence" standard of 5 U. S. C. 706 (2)(E). Second is the "unwarranted by the evidence" standard in Section 706 (2)(F). Third is the question of whether the action of the Agency is "arbitrary, capricious and an abuse of discretion, or otherwise not in accordance with law" as provided in Section 706 (2)(A). The petitioner, on page 9 of his petition, cites the *Overton Park* case as limiting *de novo* review of Agency action to the first and second standards above. However, this hold-

ing by the Court referred specifically to the question as to whether the Secretary's decision was "unwarranted by the evidence".

It is true that the Court below remanded this case to the District Court and that the Court below used the terminology "trial *de novo*". It is equally true, however, that the Court below specified the exact procedure to be followed by the District Judge on remand and that procedure is the exact procedure that this Court set forth as the proper procedure for judicial review, but this Court designated this procedure as "plenary review". The Court below specifically held that the District Judge would be limited to finding whether or not the Comptroller's ruling is capricious or an abuse of discretion. Since the Court below specified the exact procedure to be followed by the District Judge, and since this procedure coincides fully with this Court's remand for "plenary review" in the *Overton Park* case, *supra,* to determine whether the Agency action was "capricious or an abuse of discretion", there is no logical basis nor legal ground for granting the Writ requested even though the Court below used the term *"de novo"* rather than "plenary review".

The crux of the case is that the *Overton Park* case, *supra,* specifically held that the case should be remanded to the District Court rather than to the Agency, whereas the petitioner asks that this case be referred back to the Agency rather than to the District Court.

CONCLUSION

In view of the fact that the decision of the Court below clearly sets forth the standards for review and the procedure to be followed, as this Court has previously declared to be proper in the case of *Citizens to Preserve Overton Park v. Volpe,* 401 U. S. 402, 415-421, the petition for a writ of certiorari is without merit and should be denied.

Respectfully submitted,

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Attorney for Respondents.

January, 1973.